

Freedom of Information Act 2000 (FOIA) Decision notice

Date: 22 September 2021

Public Authority: Manchester City Council
Address: PO Box 532
Albert Square
Manchester
M60 2LA

Decision (including any steps ordered)

1. The complainant has requested information relating to the People's History Museum (PHM).
2. The Commissioner's decision is that Manchester City Council (MCC) has correctly cited section 12(1) FOIA, in response to the request.
3. The Commissioner does not require MCC to take any steps.

Request and response

4. On 29 November 2020, the complainant wrote to MCC and requested information in the following terms:

"Please provide me with all email correspondence to or from any of Manchester's elected councillors containing the terms "People's History Museum" with or without the apostrophe "People's Museum" with or without the apostrophe or "PHM" between August 1st 2020 and November 29th 2020"
5. The MCC responded on 4 January 2021 and refused to provide the requested information citing section 12 FOIA as its basis for doing so.
6. Following an internal review MCC wrote to the complainant on 2 February 2021 and maintained its position.

Scope of the case

7. The complainant contacted the Commissioner on 10 March 2021 to complain about the way his request for information had been handled.
8. The Commissioner considers the scope of this case to be to determine if the public authority has correctly cited section 12(1) of the FOIA in response to the request.

Reasons for decision

Section 12 – cost of compliance

9. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate cost limit.
10. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') at £450 for public authorities such as MCC.
11. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours for the public authority.
12. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - determining whether the information is held;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.
13. MCC explained that after carrying out an email search for all elected councillors approximately 1130 emails were identified.
14. In its internal review MCC further explained that there are currently 94 elected councillors and an email search for all 94 councillors within the search terms requested generated over 1000 emails. Many of these

emails have multiple documents attached which in turn relate to a number of different topics which are not within the scope of the request, that is, do not relate to the PHM.

15. MCC went on to state that although Councillors are provided with council email accounts primarily for council business, it is accepted and acknowledged by MCC that councillors also use their council email address for other purposes such as constituency work, political group discussions and sometimes for limited personal purposes.
16. Although a councillor is a member of the council, information held on MCC generated councillor email accounts that is personal or political group related or relates to constituency work is not 'held' by the council and is therefore outside the scope of the FOIA.
17. MCC holds this type of information on behalf of another, through hosting the email account and not for its own purposes as MCC has no business need for, or control of this type of information
18. In order to comply with the information request it would be necessary to identify which of the 1000 plus emails are 'held' by MCC rather than simply hosted on the council system. It would then be necessary to review each email and attachment to determine whether they fell within the scope of the request.
19. It estimated that it will take approximately three minutes to review each email that the search produced to determine whether any of the 1000 plus emails are within scope of the FOIA.
20. Therefore in order to locate any relevant information would take in excess of 50 hours. MCC would then need to extract any relevant information from those emails and attachments exceeding the cost limit further.
21. MCC acknowledged that it may take slightly less than three minutes for emails that are duplicated, such as the same email sent to multiple councillors or to filter out any emails that clearly relate, for example to the business of a political group.
22. However, if there are a number of attachments it is likely to take longer than three minutes to locate any relevant information. It is estimated that to determine which of the 1000 emails are held by MCC for its purposes and extracting the relevant extracts from the, in some cases, multiple attachments to those emails will take well in excess of the 18 hour statutory cost limit for local authorities. MCC confirmed that it did not consider the time taken to consider exemptions, to redact the information or to consider any public interest test when applying the cost limit to the request.

23. The Commissioner notes the complainant's view that:

"The public body refused my request for data on the grounds of officer time required to review the documentation. I had not asked them to review the documentation, merely to send to me the documentation including the specific terms listed." and

"The public body could provide me with the emails requested en bloc that they say they have already compiled. I have not requested, and do not wish, for them to spend time going through them internally."

24. It may be helpful to explain that section 1 FOIA provides a general right of access to information requested. However, a public authority has a duty to consider whether any information located is relevant to the request.
25. For example, the request relates to PHM, and emails have been identified that may contain relevant information. Some of those emails may be related to constituency work and therefore not held by MCC. In addition, emails that are held by MCC may contain information that is outside the scope of the request, for example a forthcoming meeting agenda.
26. It is for these reasons that is not a case of merely providing the information without reviewing it. Furthermore, the complainant asserts that the information has already been compiled where in reality MCC has identified 1000+ emails that may be within scope but has not started any process to compile information as to do so would exceed the cost limit.
27. Having considered the estimates provided, the Commissioner finds that they are realistic and reasonable. She therefore accepts that for MCC to comply with the request would exceed the appropriate limit and that it was entitled to rely on section 12(1) of the FOIA to refuse the request.

Section 16 – advice and assistance

28. Section 16(1) of the FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request where it would be reasonable to do so. In general, where section 12(1) is cited, in order to comply with this duty a public authority should advise the requester as to how their request could be refined to bring it within the cost limit, albeit that the Commissioner does recognise that where a request is far in excess of the limit, it may not be practical to provide any useful advice.
29. The Commissioner notes that MCC suggested the complainant may wish to consider refining his request by specifying particular councillors, or

including particular search teams in addition to those in the original request.

30. The Commissioner is satisfied that MCC has complied with its obligations under section 16(1).

Right of appeal

31. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

32. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
33. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Susan Duffy
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF